Telechronometer Co. v. Baker, 164 Wash. 483, 491-96, 2 P.2d 1099 (1931) (citing earlier version of above quoted provision); State ex rel. Public Service Commission v. Skagit River Telephone & Telegraph Co., 85 Wash. 29, 36, 147 P. 885 (1915)(describing Commission's power to regulate public utilities as "plenary").

The Commission also agrees with Public Counsel that the declaration at RCW 80.36.300(5) that state policy promoting diversity in the supply of telecommunications services and products provides authority to order unbundling and resale. It is clear from this record that unbundling and resale are key elements in fostering diversity in supply of services and products.

The Commission does not agree with USWC's argument that the "essential facilities" doctrine applied in antitrust law is applicable in the context of Commission regulation of telecommunications companies' practices. This Commission is charged by statute to determine adequate and efficient practices to be observed by telecommunications companies, and to correct practices that tend to stifle competition, RCW 80.04.110. While reference to antitrust law by analogy may be useful in some future cases, we are not here applying the antitrust statutes. There is ample testimony in this record that requiring new entrants to duplicate all of the facilities of existing LECs is highly inefficient, and that it tends to stifle competition.

However, it appears that the Commission need not order unbundling at this time, given USWC's representation that it will file an unbundled loop tariff, and the apparent lack of an immediate need for more extensive unbundling. At this time, the Commission is satisfied with a first level of unbundling that includes an unbundled loop and an efficient line-side interconnection.

USWC shall file a tariff within 30 days of this order that offers access to a two-wire connection from an end user's premise to the USWC central office and provides for line-side interconnection -- the transmission path between the incumbent LEC's main distribution frame and the new entrant ALEC's collocated equipment. This tariff should be unbundled from redundant elements such as channel performance, remote testing, and conditioning. In addition, the line side interconnection should be equally efficient, as suggested by ELI witness Cook in his direct and rebuttal testimony. Line side interconnection involves running a two-wire jumper between the vertical and horizontal sides of the main distribution frame, cross-connecting the appropriate wire pair on the horizontal side to the alternative company's collocated equipment. (Ex. T-88, p. 6)

In support of its tariff, USWC should file a TSLRIC (total service long run incremental cost) study consistent with the cost methodology, input data, assumptions, and cost modeling recommended by Commission Staff and discussed in greater detail in the cost section of this order (Section V.). The Commission is leaving open the question of what level of contribution should be established above TSLRIC but wishes to make clear that the starting point for such discussions should be TSLRIC.

Further unbundling, beyond the unbundled loop and line-side interconnection, will likely be necessary, particularly in areas where complications with right-of-way and conduit access makes duplicating the incumbent's network not only economically, but technically, impossible. In Docket No. U-86-86, the Commission instructed USWC that it expected the company to move in the direction of unbundling monopoly and competitive elements as much as possible. In re Pacific Northwest Bell Telephone Company, Docket Nos. U-86-34, U-86-35, U-86-36, U-86-86, & U-86-90, Fourth Supplemental Order (April 1987). That continues to be the Commission's policy. See, WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488,-911490,-920252, Fourth Supplemental Order (November 1993).

The ability of an incumbent company to successfully acquire pricing flexibility, either through seeking competitive service classification or through an alternative form of regulation, could rest on the extent to which it has freed up its potentially competitive services from its bottleneck and monopoly services. This case confirms the Commission's belief that incumbent LECs will see the benefit to unbundling, not only for advantages associated with freeing itself up to compete more effectively but also in maximizing the use of its network and the resulting revenues associated from that use.

Thus, while we would prefer that companies step forth with unbundling tariffs, for now the Commission supports a bona fide request procedure proposed by Commission Staff witness Selwyn, and endorsed by WITA.

Resale is a significant issue in the case of extensive unbundling. The Commission is not ordering extensive unbundling. USWC shall allow resale of unbundled loop and other transport service, except that residential service may not be resold as business service and local call termination may not be used to deliver toll traffic.

E. NUMBER PORTABILITY

1. Introduction

Number portability is the ability to retain a telephone number when a subscriber changes from one service provider to another (service provider portability), or when moving from one geographic location to another (geographic portability). With true number portability, the change of provider or location would be seamless, allowing users to be able to perform the same functions they were able to do previously. USWC is proposing an interim solution, using its existing service options at existing tariffed rates, until true portability can be established.

In its rebuttal testimony, USWC proposed to offer two forms of interim number portability, using remote call forwarding and direct number route indexing. The company intends to price the service at about $4 a month, plus two non-recurring charges. (Owens, Ex. T-32, p. 67)

2. Positions of the Parties

USWC argues that number portability is not an absolute prerequisite for effective competition, but agrees that number portability could provide benefits to consumers generally, and states that it will continue to pursue workable solutions. USWC argues the Commission should approve the company's interim approach on this issue, and allow USWC to file its proposed tariff for review and implementation.

GTE states that it is an active participant in current industry trials and that ELI did not prove that GTE is unwilling to provide number portability.

WITA agrees with ELI witness Ackley that number portability is an important element of intraexchange competition, and that the Commission should establish a timeline for the industry to develop a service provider number portability solution and report back to the Commission. It also recommends that the Commission establish a series of deadlines for the existing Washington Exchange Carrier Association docket considering number portability.

Commission Staff recommends that Market Expansion Line and Direct Inward Dialing be made available by USWC to interconnecting service providers at rates which reflect USWC's TSLRIC or ASIC (average service incremental cost, discussed infra) of those services, set out on confidential page 45 of Commission Staff witness Wilson's rebuttal testimony (Ex. T-155). Public Counsel supports Staff's recommendation.

TCG concedes that true service number portability is not yet feasible. The lack of number portability, however, has a profound impact on the ability of TCG and other ALECs to market their services to existing LEC customers. Most customers are unwilling to change providers if they cannot keep their numbers. Interim solutions have serious and substantial flaws. TCG therefore argues that incumbent LECs should be required to provide interim number solutions for their former customers who change service providers without charge, until a permanent number portability solution has been developed and deployed. Alternately, the service should be available at TSLRIC. TCG argues that the lack of number portability arises because of the way LEC networks were originally configured, and that LECs should not be directly compensated for more than their costs of mitigating a barrier to competition -- a barrier from which they benefit and for which they are responsible.

ELI argues that the availability of true local service provider number portability is a necessary precondition for effective local service competition. ELI witness Ackley testified that 86% of ELI's sales contacts terminated as soon as the customer found out they had to change their telephone number. [TR., p. 1227, ll. 18-21] ELI recommends that the Commission order the parties to cooperate to develop a permanent solution, and report to the Commission within six months. ELI endorses the USWC offering but believes the service should be at the lowest possible price to mitigate for the technical deficiencies and the economic penalty imposed on an ALEC for not being able to efficiently offer its customer the ability to retain its telephone number when switching service providers.

MFS witness Schultz testified to similar marketing problems caused by the lack of number portability. MFS argues that the Commission should order the incumbents, on an interim basis, to provide ALECs with Co-Carrier Call Forwarding ("CCF") as a form of number portability. It argues that the New York Public Service Commission has ordered CCF, and that CCF, as Mr. Schultz described, has numerous advantages over "Flexible DID" and other remote call forwarding alternatives. It argues that USWC provides a conceptually similar service, "call forwarding - variable," and that the Commission should order USWC to provide this service to ALECs at cost. However, MFS also believes that a $4.00 monthly recurring fee per redirected business line (the negotiated interim rate in New York) is an acceptable interim solution.

MCI also argues that the availability of local number portability is essential to the development of effective competition. Their witness Mr. Traylor testified about a Gallup survey performed for MCI on a national basis that showed that 83% of those surveyed considered it important to retain their telephone numbers when changing service providers. [TR., p. 1683] MCI witness Cornell testified that allowing USWC to charge retail rates for its interim solutions would create an incentive for it to try to delay provisioning true service provider number portability, because it benefits commercially from the sales and because delay will impede entry. Dr. Cornell recommends that the cost of USWC's interim proposals be recovered either by setting the price at cost (TSLRIC), with no markup, or by a surcharge on all telephone numbers.

3. Commission Discussion and Decision

The Commission is persuaded that true number portability is an essential condition for effective local exchange competition just as it has been for the "800" number services market. The Commission also believes that in the interim, less than perfect number portability needs to be available. USWC's offer of its two services is appropriate. However, the rate for those services should be set at the company's incremental costs. Interim number portability is a stopgap measure until permanent number portability can be established. Thus, there is no reason for USWC to recover common costs from this service. USWC shall file its interim number portability tariff within 30 days of the date of this order. In the absence of an incremental cost study for interim number portability services, the Commission will accept the rates set forth by Commission Staff witness Wilson. (Ex. T-155, p. 45)

All parties on brief indicate a willingness to work on a permanent true number portability solution. The Commission asks that the parties, through the WECA docket and other forums, review the various trials around the country and to return to the Commission with a recommendation by July 1, 1996, for immediate implementation and funding of a true local number portability solution.

F. DIRECTORY LISTINGS, DIRECTORY ASSISTANCE, OTHER DATA BASES

1. Positions of the Parties

USWC suggests that ALECs have several options for listing their customers' information in the U S West Direct directory, including negotiating with U S West Direct and purchasing USWC's listing services. (Owens, Ex. T-10, p. 50) This new listing service provides for a listing in USWC's voice and electronic directory assistance databases at a price of $0.75/month per business listing and $0.60/month per residential listing, plus a $5.00 non-recurring charge for each listing added or changed. (Ex. T-32, p. 56) USWC further argues that directory assistance and listings in directory databases and publications are not essential facilities because there are alternative providers.

GTE states that it plans to include new LEC customers in its directories and directory assistance databases because of the value that more complete information provides its customers. [Beauvais, TR., p. 1872, ll. 1-3]] GTE indicates that it is willing to enter into contracts with ALECs regarding the specifics of directory listings and the provision of directories.

The ALECs argue that its not economical to produce a separate published directory. They want their customers to be included in database, white pages, and simple listings in yellow pages; plus they want USWC and GTE to supply copies of the directories for distribution. These services should be provided free or at avoided costs. These parties, as well as Commission Staff, believe that USWC and GTE should provide directory assistance on the same terms and conditions that they provide directory assistance to other incumbent LECs.

Public Counsel wants consumers to have seamless access to directory assistance and white pages. Public Counsel recommends that the Commission mandate a unified white pages directory and ensure that USWC makes published directories available on an incremental cost basis.

MFS argues that directory listings should be free because incumbent LECs gain value in having a complete listing. USWC appears to agree with the notion that listings add value when it represented that U S WEST Direct's goal is to have complete and accurate listings of all of the consumers and businesses covered by its directories, regardless of whether a particular customer is served by USWC or an ALEC." (Owens, Ex. T-10, p. 50)

WITA states that the independent LECs are required to publish directories, and that all customers should be included in white page listings. It argues that access to directory assistance and data bases and the duty to publish one's own directory are items that should be competitively neutral, implying that they should be offered on the same terms and conditions.

2. Commission Discussion and Decision

Commission rule requires that a telephone directory be regularly published for each exchange, listing the name, address, and telephone number of the subscribers who can be called in that exchange. Additionally, the rule requires that subscribers be furnished with the directory or directories that contain listings for all subscribers who can be called toll free from that exchange. WAC 480-120-042

The Commission agrees that there are alternatives to published directories and directory assistance. However, there is a strong public and consumer interest in having a complete listing of subscribers for each local calling area available to subscribers. Commission rules enforce this interest by requiring that subscribers be provided the directories necessary to access all numbers within a local calling area. In the absence of a complete, unified listing, the incumbent LECs would have to acquire directories from every other telephone company providing service in that calling area and provide each subscriber with a set of such directories. USWC witness Owens agreed in cross examination that independent directories published by each ALEC will cause "some customer confusion." [TR., p. 341, ll. 15-16] We do not believe that a situation where multiple companies distribute different kinds of directories to all telephone customers in a calling area is practical, economically feasible, or desirable. Thus, while USWC may argue somewhat persuasively that directories and directory assistance are not essential, we do believe a unified directory database is essential.

To ensure that USWC, GTE, and all other LECs can continue to be in compliance with WAC 480-120-042, USWC and GTE must include all listings of telephone subscribers submitted to them by companies serving the same area served by the directory or database. This database of directory listings shall be the same that is provided to the company's directory publishing subsidiaries and other directory publishers. The Commission has no basis to determine if the rates for listings put forth by USWC are fair, just, and reasonable. When asked, the USWC witness did not know the incremental cost of the service. [Owens, TR., p. 278, l. 20] However, given that there is value associated with a complete listing and that USWC and GTE are required to provide complete listings to its subscribers, the Commission believes that simple listings in the published directories should be provided, without additional charge, as "in kind" compensation to the company providing the subscriber information. The Commission will not require GTE and USWC to supply extra copies of their directories to the ALECs or their customers. However, given that these directories also contain extensive advertisements, GTE and USWC have every incentive to ensure broad distribution of their publications.

Other directory assistance, line identification data base (LIDB), and operator services should be provided by USWC and GTE to ALECs on the same terms and conditions as they are provided to other incumbent LECs.

G. THE COMPLAINTS

Three complaints are consolidated with USWC's tariff filing. TCG filed a complaint against USWC, and TCG and ELI separately filed complaints against GTE. The three complaints are nearly identical.

1. Allegations and Relief Sought

The complaints allege two causes of action, one claiming unreasonable prejudice, disadvantage, and discrimination, and the second claiming unreasonable and anticompetitive rates and practices.

a. Factual Allegations

The principal factual allegations are:

1. The incumbents are currently the de facto monopoly providers of switched local services within their Washington exchanges.

2. To provide switched local exchange service, the complainants must interconnect with the incumbents' switched networks and have mutual compensation arrangements with the incumbents for the interconnection.

3. During the summer of 1994, the complainants approached the incumbents to negotiate agreements for interconnection of the networks. The complainants proposed "bill and keep" at the end office as a means of mutual compensation for the interconnection.

4. [Re: USWC] USWC rejected TCG's proposal and offered the following counter-proposal:

a) TCG would pay USWC more to complete a call on USWC's network than USWC would pay TCG to complete a call on its network;

b) TCG would pay USWC switched access rates of approximately $0.021/minute of use, plus a $0.032/minute "lost contribution charge" to complete local calls, which creates a charge for local interconnection which is higher than USWC's current IXC access charges;

c) The $0.032/minute charge is designed to compensate USWC for lost profits on the sale of complex business line service, regardless of whether USWC's sales of that service actually decline; and

d) the $0.032/minute charge would be reduced only if USWC is allowed to increase residential rates, and would be eliminated entirely only when USWC is allowed to increase residential rates by 250%.

4. [Re: GTE] GTE rejected each complainant's proposal and offered the following counter-proposal:

> a) GTE and TCG would establish two separate trunk groups between their respective switching centers using Feature Group D signalling for the interchange of switched traffic -- one group would transport only toll traffic while the other group would transport only what GTE refers to as "local-like" and "EAS-like" traffic (alleged by TCG only);
>
> b) For intrastate "local-like" and "EAS-like" traffic, GTE would bill the complainants for terminating local (including EAS) calls based on GTE's access tariff or price list on file with the Commission, except that GTE would not bill the information surcharge and Carrier Common Line Charge (CCLC) rate elements; GTE calculates its rate at $0.0295291/minute. The complainants would bill GTE for terminating such traffic based on the complainants' access tariffs or price lists on file with the Commission (alleged by both TCG and ELI).
>
> c) The usage for "local-like" and "EAS-like" traffic would be measured where technical capability exists; otherwise, usage per port would be determined based on periodic studies of the quantity and direction of traffic, and billing would be based on those determinations (alleged by both TCG and ELI).

5. [Re: USWC] Despite further negotiations, USWC has refused to modify its proposal.

5. [Re: GTE] GTE and the complainants have been unable to reach agreement on the arrangements, terms, and conditions for interconnection.

6. The incumbents employ a "bill and keep" method of mutual compensation with other incumbent LECs for the exchange of local traffic.

7. The incumbents refuse to offer a "bill and keep" method of mutual compensation to complainants for the exchange of local traffic.

8. The incumbents' provision of interconnection with their networks for the purpose of terminating local traffic currently is a noncompetitive service.

9. The incumbents have proposed to charge the complainants more to complete local calls to complainants' customers than the incumbents charge other incumbent LECs.

10. [Re: USWC only] USWC refuses to pay TCG the $0.032 "lost contribution charge" to terminate traffic on TCG's network.

11. The incumbents offer many other local services, such as DSS or Centrex, some of the elements of which are comparable to the interconnection with their networks that the incumbents would provide the complainants.

12. The rate the incumbents propose to charge the complainants for interconnection exceeds the retail rate for the entire services of which these elements are only a part.

13. The rates the incumbents have offered to charge the complainants to terminate traffic on the incumbents' networks are far above the long run incremental cost of providing that service.

14. The incumbents have indicated that they would provide 9-1-1, TDD (telecommunications devices for the deaf) services, and directory listings and assistance, but have not made any proposal to the complainants regarding provision of these and other services that must be available upon interconnection and the exchange of local traffic.

b. Causes of Action

The complaints allege that the incumbents' refusal to offer "bill and keep" to the complainants subject them to undue or unreasonable prejudice or disadvantage in violation of RCW 80.36.170 and RCW 80.36.186

The complaints allege that the following subject the complainants to undue or unreasonable prejudice or disadvantage in violation of RCW 80.36.170 and RCW 80.36.186 and are discriminatory in violation of RCW 80.36.180:

a) The incumbents' proposed mutual compensation for interconnection with the complainants.

b) The incumbents' interconnection rate disparity vis-a-vis services such as DSS or Centrex.

c) USWC's refusal to pay a $0.032 "lost contribution charge" while insisting on charging TCG that same charge.

d) GTE's requirement that local and EAS traffic be measured.

e) GTE's requirements for separate local and toll trunk groups for local and EAS traffic (alleged by TCG only).

f) GTE's refusal to provide "transiting" tandem switching services for EAS traffic that it provides to other local exchange companies (alleged by ELI only).

The complaints allege that the following are unfair, unjust, and unreasonable in violation of RCW 80 36 080

a) The incumbents' proposed charges for network interconnection.

b) The rates the incumbents have proposed to charge the complainants to terminate traffic on the incumbents' networks.

c) The incumbents' refusal to provision 9-1-1, TDD, directory listings and assistance, and all other necessary services at existing rates.

The complaints allege that the following are anticompetitive:

a) The incumbents' proposals for use of excessive switched access rates.

b) USWC's proposal that TCG compensate USWC for the mere possibility of a $0.032/minute lost margin, i.e., that TCG insulate USWC from any effects of competition.

c. Relief sought

Each complaint prays for relief as follows:

An order from the Commission pursuant to RCW 80.36.140 and 80.36.160:

(1) ordering the incumbent to interconnect its network with the complainant's network in an efficient and cost-effective manner,

(2) establishing a fair, just, reasonable and nondiscriminatory reciprocal compensation arrangement for that interconnection, and

(3) requiring the incumbent to provide 9-1-1, TDD, directory listing and assistance, and other vital customer services upon interconnection at fair, just, and reasonable rates.

d. Counterclaims and Third Party Complaint

USWC and GTE deny the material allegations of the complaints and counterclaim for access charges.

GTE also brought a third party complaint against USWC, claiming that USWC is handing off to GTE for termination, traffic that originated on TCG's network that GTE is entitled to be compensated for terminating under its access tariff, and that USWC is not identifying the traffic so that GTE can bill for it The reference is to traffic that would be EAS traffic if it originated on USWC's network

2. Positions of the Parties

USWC contends that the complaints raise no issues not raised in USWC's direct case and presented by USWC for resolution It argues that procedurally the Commission should dismiss the complaints as moot because the order on the issues raised by USWC in its direct case in support of its tariff filling will have addressed any issues presented by the complaints.

Regarding GTE's third party complaint, USWC argues that GTE offered no proof of any amounts owed by USWC and apparently wants the issue resolved going forward. USWC has no objection to the Commission resolving the principle.

GTE contends that the complainants have no standing to contest the reasonableness of the rate level which GTE proposes to charge for the termination of complainants' local or EAS traffic, and therefore the Commission has no authority to declare the rate level unreasonable and reset it. GTE reasons that while the Commission has authority under RCW 80.36.140 to determine upon complaint that a company's rates are unreasonable or discriminatory, RCW 80.04.110 specifically limits the Commission, in the case of private complaints as to the reasonableness of rates, to entertaining complaints which are signed by specified municipal officials or by a specified percentage of ratepayers. It argues that the complainants clearly do not comply with this requirement.

GTE contends that due to the procedural posture of this case and the complainants' lack of standing to complain about the reasonableness of rates, the Commission may reset GTE's contract local/EAS rate only if it finds that GTE's application of that rate is unduly discriminatory.

GTE contends that complainants have presented virtually no evidence in support of their allegations that GTE's local/EAS interconnection rate is unduly discriminatory. It argues that GTE currently provides no interconnection service to incumbent LECs for local traffic, because there is no intercompany local traffic among the incumbent LECs. "Thus, the contract rate at which GTE has offered to terminate complainants' local traffic cannot be discriminatory."

GTE argues that the only issue is whether its refusal to apply its EAS compensation arrangement to a situation outside the Commission's EAS orders constitutes undue discrimination. It argues that it does not. It argues that undue discrimination can exist only as to "like and contemporaneous service . . . under the same or substantially the same circumstances and conditions" (quoting from RCW 80.36.180), and that there is significant uncontroverted evidence on the record that the existing intercompany EAS compensation situation is substantially different from complainants' situation because 1) the participants in the current arrangement are LECs which do not have overlapping territories and which were not in competition for the provision of local exchange and other services when the arrangement was implemented, and 2) the EAS compensation mechanisms are based upon engineering cost studies specific to each EAS route.

GTE argues that issues of universal service and collocation were not raised in the complaints against it. It argues that unbundling and resale are not issues that were raised in the complaints against it, and therefore no order may be issued in this case which directs GTE to unbundle any services or modify any of its tariffs' resale provisions.

GTE contends that ELI did not prove that GTE is unwilling to provide number portability. It contends that ELI's request that the Commission compel GTE to provide directory listings and assistance is a non-issue, because GTE plans to include ALECs' customers in its directory and directory assistance, and further, there is no legal basis for compelling GTE to provide those services to ALEC customers. It contends that complainants' testimony is devoid of any evidence to support the allegations that GTE has refused to provide them 9-1-1, TDD, and other services.

GTE argues that the only interconnection issues that are raised against it are compensation (discussed above), measurement of traffic (raised by both complainants), the use of separate toll and local/EAS trunk groups (raised only by TCG), and transiting tandem services (raised only by ELI). It contends that the complainants failed to prove their allegations on any of these points. It argues that the record establishes that GTE's use of measured rates would not unduly disadvantage the complainants. It argues that the record is clear that GTE and other incumbent LECs do not interchange local traffic, so no discrimination can be proved, and in any event, it is clear that GTE and other incumbent LECs utilize separate trunks for the toll and EAS traffic that they exchange, and that the use of separate trunks is reasonable.

ELI describes its complaint against GTE as a "friendly complaint" that "was brought primarily to ensure that the Commission had sufficient procedural basis to decide how local interconnection between GTE's network and the networks of the new entrants should be handled." It argues that its discussions of generic issues sufficiently addresses "all of the issues regarding GTNW that need to be addressed."

TCG argues that the record overwhelmingly supports the allegations of its complaints, that it has carried its burden of proof and is entitled to the relief requested in the complaints and recommended through its and other parties' testimony and in its brief.

As noted above, ELI and TCG both argue that the Commission, as a matter of competitive policy, should declare that existing local calling areas (i.e., EAS territories) apply to ALECs for purpose of distinguishing between local and toll calling.

Public Counsel is the only other party that specifically addresses the complaints and counterclaims. Public Counsel argues that the discrimination/preference/competition-based complaints of the ALECs present a close legal and factual question. It contends: "Their claims are likely meritorious, providing further justification for a bill and keep compensation arrangement."

Public Counsel analyzes the factual basis for the claim and the relevant statutes: RCW 80.36.170,.180,.186. It argues that what is "undue" discrimination or "undue" preference is at one level a policy issue to be decided by the Commission.

Public Counsel argues that the discrimination issue should be analyzed in the context of local calling areas prescribed or not prescribed by the Commission. It reviews how the Commission historically has established both local exchange areas and EAS routes. In both cases, the Commission focused on a community of interest, and created local exchange and EAS territories on a company specific basis. This made sense in an environment where companies operated in mutually exclusive service areas, but in the post-Electric Lightwave competitive environment, the Commission may wish to prescribe local calling areas for all telecommunications companies operating in a particular area.

It argues that in any event, since it is not mandatory under RCW 80.36.230 that the Commission prescribe exchange areas, and since it appears the new ALECs intend to voluntarily establish local calling areas consistent with those prescribed for others under RCW 80.36.230 and the EAS rule, the issue is neatly stated:

> May a telecommunications company maintain one compensation scheme with one telecommunications company relating to traffic it does not compete for, and another compensation scheme for a different telecommunications company relating to traffic it does compete for?

Public Counsel argues, at page 54 of its brief: "This is a close legal question. We conclude that different treatment of competitors compared to those who are not competitors could well be unlawfully discriminatory or unduly preferential or prejudicial. This is so for three primary reasons:

- The Legislature added RCW 80.36.186 in 1989, which has the effect of further emphasizing the general prohibition against discrimination and preference in other statutes, in a specific application to telecommunications companies which sell non-competitive services to each other.

- Requiring new LECs to use the LECs' access charge (i.e., usage) payment scheme when non-competing LECs use bill and keep puts unfair pressure on new LECs to price on a usage basis when their competitors have no cost reason to do so.

- There is no essential difference between new LEC "local traffic" and LEC "local traffic within a local calling area, including an EAS area."

Public Counsel also argues that "[i]t is true that significant public policies are at work in creation of EAS routes, and such routes are set as between specific companies. It is also true that 'obligation to serve' may be somewhat different between new LECs and incumbents. But the public policy is to respond to customer needs and demands for local, flat-rated calling within their community of interest. The focus for discrimination should likewise be placed on the customer interest in the situation. The new entrants must attempt to attract the same customers as the incumbents, yet without the same compensation system. As WITA's witness concluded, an access, or usage based cost compensation 'will lead to a shift from flat rate to measured service.' (Smith, Ex. T-157, p. 17) Incumbent LECs do not face this pressure in the bill and keep environment they enjoy."

3. Commission Discussion and Decision

a. The Complainants Have Standing to Complain of the Reasonableness of GTE's Rates.

The Commission finds GTE's standing analysis flawed. Its argument overlooks the "PROVIDED FURTHER" provision of RCW 80.04.110, which allows for complaints brought by competitors.[19]

b. The issues in the complaint against USWC are present in the tariff filing.

The issues raised in TCG's complaint against USWC are present in the tariff filing. The Commission's decisions on the tariff filing appear to resolve all issues in the complaint.

c. The complaints against GTE are granted, in part.

We grant the complaints against GTE as to the issue of compensation for the exchange of local traffic. We order GTE to interconnect with TCG, ELI, and other ALECs on a bill and keep basis, pursuant to the terms of this order.

The Commission's objections to any minutes of use compensation scheme, set out above, apply equally to the proposals of both GTE and USWC. Measured use interconnection rates are not cost based, require unnecessary and inefficient measurement, create a barrier to entry, and would threaten the state's public policy of affordable, flat-rated local service.

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[19] PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

As is discussed above (at pages 40-43), the Commission also agrees with Public Counsel that it is discriminatory for GTE to exchange EAS traffic with incumbent LECs on a bill and keep basis and to refuse to exchange local traffic with ALECs on a bill and keep basis.

The Commission denies TCG's complaint with respect to GTE's requirement that TCG and GTE establish two separate trunk groups between their respective switching centers. It appears that the practice GTE proposes currently is necessary given the different rates and compensation arrangements applied to toll and EAS. Currently, incumbent LECs use separate trunks for exchanging local/EAS and toll traffic.

Regarding the complaints' allegations that GTE has failed to offer provision of 9-1-1, TDD, directory listings and assistance, transiting tandem services, and all other necessary services at existing rates, the record is insufficiently developed for the Commission to determine the merits of the allegations.

d. The counterclaims and GTE's Third Party Claim against USWC are dismissed.

We dismiss the counterclaims and GTE's third-party complaint against USWC. Our ordering bill and keep compensation and our determination that EAS traffic is local traffic for compensation purposes, render those claims moot.

III. LOCAL TRANSPORT RESTRUCTURE

A. INTRODUCTION

The local transport restructure, ("LTR"), is the term applied to USWC's proposed restructure of its access services tariff for interexchange carriers. It includes an unbundling of transport from the company's switched access charge, an increase in the local switching element of the access charge, and a residual interconnection charge ("RIC") on switched access to make the filing revenue neutral.

Under the proposal, transport would be priced separately, and several transport options would be available to interconnecting carriers that chose to use USWC's transport. The local switching rate element will be increased from $0.0065/minute to $0.0100/minute. The RIC would be $0.0106/minute on every minute of local switched traffic.

As is noted above, USWC's proposed local interconnection service ("LIS") for local service competitors would incorporate the LTR's local transport options and local switching rate element.

The impetus for the LTR is a modification of interstate switched access service ordered by the Federal Communications Commission (FCC).[20]

B. FCC DEVELOPMENTS

Switched access service was initiated in 1984 upon the breakup of the Bell System. The FCC established switched access charges to compensate the LECs for the cost of switching and transport, and to provide a contribution to the general revenue requirement of the LECs' local operations. Switched access rates are based on minutes of use and distance. From their inception, switched access charges have been a very large portion (40-50%) of an IXC's cost of doing business. (Wilcox, Ex. T-1, p. 17)

In Washington State, USWC filed and gained WUTC approval for intrastate switched access rates that mirrored the first interstate tariffed rates. According to USWC witness Wilcox (Ex. T-1, p. 17), the company's present switched access rates contain a very large amount of contribution to USWC's revenues above the cost of providing the service.

In 1992, the FCC began an investigation into whether there was a need to restructure interstate access rates. An FCC order released in October 1992 established an interim local transport structure that is set to expire at the end of 1995. That order unbundled local transport from the switched access charge. It identified and set interstate rates for different types of transport configurations. LTR provides separate charges for LEC entrance facilities (the splice and cable used to link the IXC's trunk to USWC's serving wire center), for direct trunked transport between the service wire center and LEC end offices (at flat rates), and for tandem switched transport (at usage-sensitive rates). Both entrance facilities and direct trunked transport are provided at different capacity levels -- DS0, DS1, and DS3.

In an August 1993 order in FCC Docket 91-141, on expanded interconnection, the FCC adopted rules for switched transport collocation, allowing interconnection at LEC central offices. That change, together with the unbundling of transport, allowed IXCs to self provision all or part of the transport they need to reach LEC end offices and thereby avoid or reduce the transport charges they must pay the LEC.

The FCC's transport restructure results in an overall reduction in the revenues produced by the transport portion of the LECs' switched access service. The FCC introduced a transitional, residually-priced rate element called the "interconnection charge" to

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[20] See, Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992) (Transport Order); Transport Rate Structure and Pricing, CC Docket No. 91-213, FCC 93-366, First Memorandum Opinion & Order on Reconsideration, released July 21, 1993 (First Reconsideration Order); and Transport Rate Structure and Pricing, CC Docket No. 91-213, FCC 93-403, Second Memorandum Order and Order on Reconsideration, released August 18, 1993 (Second Reconsideration Order)

make up for the lost revenues. The FCC has indicated that this charge should be phased out over time in the interstate jurisdiction, allowing the industry to transition from its present configuration to one fully driven by competitive market forces.

C. USWC'S LTR PROPOSAL

USWC proposes that the Commission allow it to adopt, on an intrastate basis, local transport restructure and a pricing structure for IXC switched access service that mirrors the FCC structure.

1. Transport Options

New transport charges, for carriers that choose to use USWC's transport, would fall into four categories:

1. Entrance facilities--to recover costs for the physical interconnection and cable USWC uses to link an IXC's premises to USWC's serving wire center (the USWC switching office closest to the IXC's Point of Presence). Entrance facilities would be available at DS0, DS1, and DS3 capacities. Entrance facility rates would be flat rates equal to existing market rates USWC charges for the comparable private line network access channel.

2. Direct trunked transport (DTT) option for interoffice transport between the serving wire center and USWC end offices. DTT is dedicated transport that reserves specific transmission capacity for the exclusive use of a single company. DTT would also be available at DS0, DS1, and DS3 capacities.

   USWC proposes to price DTT on a flat rate basis. There would be two rate elements for DTT: a fixed monthly rate, plus a "variable" charge per mile per month. USWC would charge rates that are the same as existing market rates charged for comparable private line services. The price relationships for the different dedicated transport services would not be tied to the cost relationships for those services, but would take into account "market factors".

3. Tandem switched transport ("TST") option for interoffice transport. TST would carry calls between the serving wire center and USWC's end offices via USWC's tandem switch and common transport network

   A TST customer could purchase DTT for the portion of the transport between the serving wire center and the tandem switch.

   TST generally would be used by low volume carriers that do not have sufficient traffic volume to any LEC end office to justify reserving individual trunk groups. Large IXCs likely would reserve individual (dedicated) circuit groups to the LEC end offices with large concentrations of long distance calling, but they also might rely upon TST for overflow.

USWC has proposed to price TST on a usage sensitive basis, with separate charges for transmission and tandem switching. The two rate categories are:

a) tandem transmission charges, which would be usage and distance sensitive. For each mileage band there would be fixed charges per minute of use plus "variable" charges for each mile per minute of use. USWC's proposal derives the rates from the DS1 and DS3 trunk transport rates (i.e., rates equal to comparable private line services); and

b) tandem switching charge, which would be assessed on a per minute of use, and would be priced at ADSRC (average direct and shared residual cost) plus a contribution that USWC describes as "modest".

USWC's pricing of tandem switching at LRIC (long run incremental cost) plus a contribution to USWC's common costs is a different approach than the approach taken by the FCC for initial tandem switching prices. The FCC ruled that the initial tandem switching price should be set to recover 20% of the tandem switching revenue requirement. Ms. Wilcox testified that USWC is taking a different approach because the FCC's approach produces an initial price that is below the long run incremental cost of the tandem switching function, tandem switching has now become a competitive function, with the FCC's unbundling of tandem switching elements, and USWC will be in an untenable position if it has to price a competitive service below cost (Ex T-1, pp. 29-30)

4. Multiplexer charge. Multiplexers put multiple voice or data channels over a single transmission medium (line or frequency), increasing the capacity of the transmission medium. Multiplexers also would be available at DS0, DS1, and DS3 capacity levels, and would be priced at a flat monthly rate for Voice Grade-DS1 and DS1-DS3 connections. The prices are equal to existing private line rates for multiplexers.

Ms. Wilcox testified that USWC's pricing approach is consistent with the FCC's directive to base the dedicated facilities prices on special access (private line) prices. She stated that the rate relationships for the different dedicated transport services are not tied to the cost relationships for these services. The rate relationships are based on the underlying average direct and shared residual costs (ADSRC) plus a contribution to common costs, so that the prices in all cases cover costs, and the services that cost more are priced higher than those that have lower costs. She opined that it would be a mistake to price strictly in accordance with costs, as that would fail to take into account "market factors" that are equally important in setting an appropriate price (Ex T-1, pp. 27-8)

2. Increase in Local Switching Charge Element of Switched Access Rate

As part of the switched access charge restructure, USWC proposes to increase the local switching charge from $0.0065/minute to $0.0100/minute for all IXC traffic that originates or terminates on USWC's network. USWC witness Wilcox testified (Ex. T-1, p. 22) that the current charge of $0.0065/minute is among the lowest in the country, and provides a relatively low level of contribution to common costs of the firm in comparison to switched access service on the whole.[21] She also testified that increasing the switching element results in a lower RIC.

3. Introduction of the RIC

Ms. Wilcox testified (Ex. T-1, p. 31) that the transport restructure will cause a decline in transport revenues from $24 *million to* $5 *million.* Even with the proposed increase in local switching charge, USWC's LTR proposal would result in a negative impact on revenue requirements. To make the LTR revenue neutral, USWC proposes to introduce a "residual interconnection charge" element of its switched access charge. USWC would charge a RIC of $0.010243/minute on every minute of switched traffic. Ms. Wilcox testified (Ex. T-46, p. 31) that the RIC could disappear over time, and suggested that the time table for reducing the RIC and reducing other contributory elements could be determined in the company's pending rate case.

4. Elimination of Intra-LATA Foreign Exchange Service from Access Tariff

Finally, USWC proposes to eliminate its intra-LATA foreign exchange service from the access tariff. Intra-LATA foreign exchange service allows a customer to draw a dial tone and telephone number from an exchange outside the customer's local calling area, but within the same LATA. Ms. Wilcox made several arguments in support of removing this tariff. First, she stated that intra-LATA foreign exchange service is not an access service. Second, she stated that this same service is available in the basic exchange tariff, and removal of the service in this tariff will eliminate offering the same service for different prices. Lastly, Ms. Wilcox stated that LTR will have a significant impact on these customers' rates, so eliminating the service should be done now, in conjunction with LTR. (Ex.T-1, pp. 23-24)

[21] On rebuttal, Ms. Wilcox testified that total transport contribution is nearly double the percentage contribution in the current local switching charge, and provided Exhibit C-47 in support of this statement.

D. POSITIONS OF THE PARTIES

1. IXC Stipulation

The IXC intervenors -- AT&T, MCI, Sprint, and the IAC -- recommend, via a stipulation, that the Commission defer action on the proposed LTR, and that rates for switched access service under the LTR be established in USWC's current general rate case. In the stipulation, they also state agreement on principles that should govern rates for switched access service under the proposed LTR in the rate case:

1. Costs for each element should be established by TSLRIC--or USWC's ASIC (average service incremental cost).

2. Each element should be priced at TSLRIC.

3. Universal service should be addressed in another docket.

4. If the Commission determines that any revenue in excess of TSLRIC should be recovered through access prices, any such amount should be identified and recovered through the CCLC. The other rate elements should be priced at TSLRIC. The CCLC should be phased out over two years, or the same period over which local rates are increased, whichever is shorter. In the event that USWC and GTE are allowed entry in the interLATA market, any remaining CCLC should be eliminated at the date of such entry.

5. Although parties recommend that prices for LTR rate elements not exceed TSLRIC, if the Commission nevertheless determines contribution should be included, the price difference between differing access configurations should reflect only the absolute underlying differences in TSLRIC cost.

2. Individual Positions

With regard to the IXCs' requested deferral of consideration of the LTR, USWC argues that a decision on the LTR should not be pushed off to further proceedings. USWC argues that the first step toward rational competitive interconnection policies is to integrate interconnection charges between wireline carriers (IXCs and ALECs). However, USWC argued that the current charges are too high and excessively bundled.

Responding to allegations that it has not properly priced its transport options, USWC argues that pricing involves considerable judgment, and is not black and white. It argues that there are several principles that should be observed:

1. Prices should not be set at incremental cost, unless that is the only price for which there is a demand.

2. No service should be offered for less than the incremental cost.

3. Normally, all services should provide contribution to shared and common costs, as well as the profit of the company.

4. This does not mean that markups need be uniform for all services. They should not be, when market factors are appropriately considered. This is where judgment comes into play, and the company's proposals in a dynamic competitive market should not be second guessed by the Commission unless they are manifestly out of line and will cause clear harm to specific public policies the Commission is charged with protecting.

Regarding allegations that the relationships between USWC's prices for DS1, DS3, and tandem switched transport disadvantages smaller carriers, USWC argues their witness Ms. Wilcox's Exhibit C-47 demonstrates that the critics have incorrectly analyzed the relative contribution levels between services and that contribution levels for the three transport alternatives are comparable, and the rates are not unreasonably or unduly discriminatory.

USWC argues that allegations of discrimination, which it defines as customers in the same class paying different rates for the same service, are not correct as a matter of law. For example, all DS1 customers pay the same rate. USWC argues that the three services being compared are different services, and do not involve different rates for the same thing.

USWC argues that its proposed transport prices are not excessive in the marketplace because 1) they are the same as for equivalent private line services, 2) they are lower than those charged by independent LECs, and 3) they are higher than those charged by USWC's current competitors, as shown by Ex. C-49. Therefore, the Commission should allow USWC to price these services to the dynamic market conditions, in order to maximize its participation.

USWC responds to a Commission Staff recommendation that it double DS3 rates. It contends that the recommendation is arbitrary and makes no sense, that no evidence has been provided to show the rates are under cost or have too little contribution. It argues that the recommendation seems designed only to remove USWC from the dedicated transport market, as dedicated transport is the first service that competitors are targeting. It argues that it is not permissible for the state to use its power to purposely harm USWC's legitimate business, and that intentionally unbalancing the playing field against USWC is not the Commission's role under any of the State's statutes.

Concerning the proposed local switching charge increase, USWC argues that the current $0.0065/minute is among the lowest in the country, and below the $0.008357/minute approved at the federal level; that the increase results in a lower RIC; and that the cost:price relationship is reasonable, especially compared to other switched access rates.

USWC defends its RIC proposal. It argues that the Commission cannot adopt rates in this case that lower the Company's revenues, as the Company is entitled to earn a reasonable return, and there was no evidence presented that earnings are excessive. USWC argues that, as Ms. Wilcox testified (Ex. T-1, p. 31), under the transport restructure its transport revenue will decline from $24 mil to $5 mil. USWC argues that the RIC may be reduced over time as rates are rebalanced.

USWC opposes Commission Staff's proposal that it be ordered not to charge the RIC to companies who do not use USWC's transport facilities. It states several reasons for its opposition to that proposal: 1) It violates USWC's right to revenue neutrality; 2) It would be difficult and expensive to administer; and, 3) It would subject USWC to a competitive disadvantage. USWC argues that, furthermore, the Commission has long followed a policy that IXCs must make significant contribution to the support of the local network, from which those companies gain immense benefit. That absolute level of contribution needs to be reexamined in the rate case, but this is not the appropriate proceeding to reduce that contribution just for those companies that utilize non-USWC transport. Finally, USWC argues that their RIC is not a charge related to transport, that it merely represents a way to make the filing revenue neutral. Staff's recommendation does not serve to further any public policy goals, and its adoption would be improper.

Commission Staff concurs with USWC on the need for local transport restructure, and recommends that the Commission not delay a decision on the LTR. Staff agrees with the general concept of LTR proposed by USWC, but takes issue with several aspects of the Company's proposal, as described below. Staff argues that the suspension date of the present interconnection docket predates the suspension date in the rate case, so the Commission cannot simply defer consideration of these rates to a later date. Staff suggests that the Commission may revisit LTR later.

Regarding transport prices, Commission Staff argues that the relationships between USWC's proposed prices are inappropriate. Staff witness Selwyn testified that it is inappropriate to price LTR transport based on private line prices, as advocated by USWC, because private line and local transport markets are different, and are at different stages of competition. (Selwyn, Ex. T-114, p. 48)

Commission Staff contends that it is inappropriate to price DS3 and DS1 switched transport with varying levels of contribution. Staff advocates a 9.6:1, DS3:DS1 price ratio as the basis for determining if the proposed prices provide an unfair advantage to large IXCs, consistent with the FCC's order in the interstate local transport restructure proceeding, except as to the DS3 entrance facility rate. (Selwyn, Ex. T-114, p. 47) Dr. Selwyn testified that after examining USWC's updated cost studies, all DS3 transport (other than the entrance facility charge) falls significantly short of the 9.6:1 benchmark. (Ex. T-116, p. 3)

Commission Staff recommends that, in order that USWC's proposed prices pass the 9.6:1, DS3:DS1 benchmark, the Commission set all DS3 transport rates (other than the entrance facility charge) at twice the level proposed by USWC. Staff explains that its main concern is the relative pricing between DS3:DS1, not the absolute levels. It argues that the Company's pending rate case is the proper forum to reexamine the Company's switched access rate levels in general, when both the DS3 and DS1 transport rates could be reduced, while still maintaining an appropriate price ratio.

Staff supports statements by MCI witness Wood that USWC and other LECs should not be in the position to determine the winners and losers among IXC carriers.

Commission Staff urges the Commission to reject the proposed increase in local switching from $0.0065 to $0.0100/minute. Staff contends that USWC has not provided the Commission with any basis for a 57% increase in the local switching charge. It argues that the increase is an attempt to shift substantial amounts of contribution from local transport elements to local switching--a monopoly bottleneck service.

Commission Staff witness Lundquist characterized USWC's proposal to increase its local switching charge as odd, at best. (Ex. T-107, p. 32) Staff argues that USWC's position does not square with USWC witness Harris' testimony that switching costs have been declining dramatically in recent years. Mr. Lundquist performed a comparative analysis of contribution levels, which he testified does not support USWC's claim that the local switching charge provides a relatively low level of contribution. (Ex. T-107, p. 34) Staff argues that Mr. Lundquist's analysis shows that USWC employed contradictory tests for determining the appropriate level of contribution.

Relying on an exhibit showing local switching charges from many jurisdictions, Mr. Lundquist characterized USWC's local switching charge as "...admittedly toward the low end of the pricing spectrum..." but not "out of line" with other jurisdictions. (Ex. T-107, p. 36) Staff argues that USWC's argument lacks any analysis of why other states' charges are lower, or why those would be appropriate and the current charge is not.

Commission Staff supports a RIC, without enthusiasm, as the least objectionable way to achieve revenue neutrality, and because it is temporary until a decision in the general rate case. Dr. Selwyn testified that the RIC results in USWC's proposed LTR rates being no closer to the economies of providing access service than the current access prices and structures. (Ex. T-114, p. 32)

Because it opposes an increase in the local switching rate, Commission Staff proposes a RIC higher than USWC's proposal. Staff calculates that the RIC would be $0.014073/minute, rather than $0.010574/minute proposed by USWC. (Wilson, Ex. T-155, p. 51) A lower switching charge than proposed would necessitate a higher RIC, to maintain revenue neutrality.

Commission Staff strongly objects to USWC's proposal to apply the RIC to all local switched minutes, regardless of whether that traffic is switched to USWC transport or a competitor's transport. It proposes that application of the RIC be limited to traffic switched to USWC transport facilities. Staff argues that applying the RIC to all switched minutes would inappropriately establish a protectionist policy which would insulate USWC from losses in any competitive local transport business. (Selwyn, Ex. T-114, p. 33) The RIC is to recover $14.8 million, while local transport is $4.3 million. The net effect is to negate USWC's "economically based" rate structure. Staff contends that its proposal could be accomplished by reprogramming the Company's interexchange access billing system. As an alternative, Staff suggests a self-reporting mechanism, which would require IXCs that purchase local switching to certify the percent of total switching minutes being completed on USWC transport facilities. This would be similar to the current percent interstate use factor IXCs use to separate intra and inter state traffic. Staff argues that USWC's allegations that these options would be costly and difficult to implement are unfounded, based on Ms. Wilcox's cross examination testimony that the company had collected no data and done no studies to support these allegations, and that she had no experience in reprogramming the company's billing system.

In response to USWC's contention that applying the RIC only on traffic switched to USWC transport facilities would put the Company at a competitive disadvantage, Staff makes two arguments: 1) Dr. Selwyn testified that Staff's proposal should not limit USWC's ability to compete in the transport market, but USWC's proposal would limit competitors' ability to compete; and, 2) Even if Staff's proposal resulted in a slight loss of market share for USWC, the Company would probably see an absolute gain in business, because competition will probably stimulate demand for telecommunication services. (Selwyn, Ex. T-114, p. 39) Staff also argues that the temporary nature of the RIC would have at most, a minimal impact on the Company.

Regarding USWC's proposal to eliminate its intra-LATA foreign exchange service, Staff recommends that the Commission deny the request. Staff expresses a concern about the revenue impacts of eliminating the service from the switched access tariff. (Wilson, Ex. T-154, p. 20) Mr. Wilson also testified that the Company provided no justification for the change.

Public Counsel generally supports USWC's local transport restructure proposal, except for the proposal to increase the local switching charge. Public Counsel does not argue against revenue neutrality, and agrees that a RIC is appropriate. However, because of opposition to the proposed increase in local switching, Public Counsel generally supports Staff's RIC calculation. While Public Counsel agrees that Staff's proposal to apply the RIC only to traffic switched to USWC transport facilities is a theoretically sound approach, it takes no position on the issue. Finally, Public Counsel recommends that the policy decision on whether the RIC should be maintained indefinitely should be decided in the general rate case.

AT&T contends that the structure of USWC's proposed LTR is a good step, but that the prices are unacceptable. AT&T urges the Commission to reject the revisions proposed for switched access for several reasons. First, all parties agreed that TSLRIC is the proper cost basis for rational pricing. However, given Staff's testimony of its inability to obtain information to review costs, USWC has clearly failed to meet its burden of supporting its rates. Second, most parties disagree with the fundamental premise of USWC's "revenue neutral" filing. Given that USWC's revenue requirement is before the Commission in the Company's general rate case, the rate case would be the appropriate place to address USWC's switched access rates. (Sumpter, Ex. T-110, p. 13) AT&T also argues that the Commission can adopt local interconnect policies and rates, without changing access rates. Changing those rates for a few months after this case is concluded until the order in the rate case is issued is not an efficient use of resources. The proposed rates are so inequitable that IXCs support the continued application of current access charges. Moreover, unlike local interconnection, there are switched access rates currently in effect.

AT&T contends that USWC has the burden of supporting its rates and has failed to do so. Its cost studies are inadequate. Rather than moving toward TSLRIC prices as USWC contends, its proposal is an obvious attempt to foreclose any competitive alternatives that may emerge for the LTR functions. By doubling its local switching charge, IXCs will still pay USWC the same amount of money; it is just called something different.

AT&T recommends that if the Commission decides to adopt USWC's proposed LTR tariff, it should approve rates put forth by IAC witness Gillan as the rates that best support the approach in the IXC stipulation. AT&T opposes Staff's recommendation to double the proposed DS3 rates, in order to attain a particular contribution ratio with DS1 rates, as it would increase access charges, and is contrary to the record evidence supporting reductions in access rates.

MCI argues that USWC's LTR is driven by entrance of competition into the market for switched access service. MCI witness Wood testified that LTR would have several affects, one of which is that if excessive markups over cost are built into interconnection rates that competing companies pay USWC, customers (both companies and end users) will be denied the benefit of declining prices in a competitive market. (Ex. T-136, p. 31)

Regarding the price relationship between DS3 and DS1 transport rates, MCI argues that USWC's claim that competitive pressures are the impetus for its LTR filing is inconsistent with its proposal. MCI argues that Ms. Wilcox's statement that LTR rates have been set to exceed ADSRC plus contribution is contrary to the result in a competitive market. If USWC actually faced competition, the contribution rate elements should have dropped to slightly above TSLRIC to recover economic overhead associated with the service offering.

MCI argues that Ms. Wilcox admitted that its DS3:DS1 rates are not based on underlying costs, but on "market factors." MCI witness Wood testified that allowing an incumbent to use anticompetitive pricing strategies to eliminate existing competition, or prevent future competition, is indeed a use of market factors, but is a use that should be constrained. (Ex. T-136, p. 41) He testified that price differentials which track differences in cost are not inherently discriminatory, but USWC's proposed prices are discriminatory. (Ex. T-136, p. 42) If USWC is allowed to arbitrarily exaggerate the rate differential in its DS3:DS1 rates as it has proposed to do, it would provide USWC the ability to directly